

MEMORANDUM
September 1, 2005

TO: Advisory Committee Members
FROM: David Cottingham
RE: Process forward

Based on our review of the comments received from members of the Advisory Committee, including the Commission's, on the 5 August draft report, we are convinced that the Committee will not reach consensus on the content of the report. Many people have identified what they consider to be "fatal flaws" in the tone, findings, and recommendations of the document. The memo from the facilitators summarizing major issues in those comments identifies a number of important issues for which consensus is not possible because of opposing viewpoints. Whereas the Committee members agree on some general issues, a seemingly unbridgeable gulf exists regarding many of the important topics.

The Commission undertook this dialogue with the end goal of developing recommendations to Congress. To this end we established a process to encourage diverse interests to express their views in an open, public forum with the aim of informing the Commission's deliberations on this topic. Although we fully participated in all aspects of the process, it did not provide the clarity we believe is necessary for a report to Congress. We are now faced with deciding how best to use the group's discussions to formulate a report to Congress. We see little value in continuing negotiations on the text of the August 5 draft final report, due to the extensive and discordant nature of the comments Committee members have submitted.

As conveners of the Advisory Committee, the Commission offers the following proposal as a potential path forward:

Step 1. The Commission, with assistance from the facilitators, would prepare a short synopsis of the process explaining that we brought people with diverse interests together to engage in dialogue and develop recommendations endorsed by all or most stakeholders regarding how best to proceed to address potential effects of noise on marine mammals. This report would note that Committee members remained divided on most key issues. Committee members would be given an opportunity to provide comments on a draft, which the Commission and facilitators would revise accordingly.

Step 2. Members of the Committee would have an opportunity to provide to the Commission individual, caucus, or cross-caucus statements that express their perspectives on the issues the group discussed in response to the Advisory Committee's charter. The full Committee would first discuss and agree on rules governing the preparation of these statements (*e.g.*, page limits; range of topics; deadline for receipt). These individual, caucus or cross-caucus statements would

be submitted to the Commission by the end of October and be forwarded, without change, to Congress as part of the Commission's report.

Step 3. The Commission would prepare a report to Congress in response to its charge. Our report would append all individual/caucus statements received by the deadline, as well as the synopsis of the process described in #1 above.

Step 4: The Committee members would receive the Commission's submitted report and retain the option, if they wished, of submitting their own, separate reports to Congress.

We propose that Committee members discuss this proposal, and any other options you might raise, on the conference call on Tuesday, Sept. 6 from 1-4pm. In addition, given the range and intensity of opinions submitted regarding the 5 August draft and the likely futility of further negotiations on that document, the Commission would like to discuss the utility of holding the planned three-day meeting in September.

We are committed to finding an outcome that all can live with and look forward to your thoughts. Thank you all for your continued efforts.